YEE SENG RUBBER CO. SDN. BHD. v. THE COMMISSIONER OF THE FEDERAL CAPITAL OF KUALA LUMPUR

[A.C.J. (Yong J.) April 14, 1972]

[Kuala Lumpur — Originating Motion No. 22 of 1971]

Local Government — Rating — Appeal to High Court against assessment — Effect of non-compliance with conditions for appealing — Town Board Enactment (Cap. 137) s. 44(i).

Appeal — Local government — Appeal against assessment of holdings — Town Boards Enactment (Cap. 137) ss. 40, 42, 44(i).

This was an appeal against the respondents' assessment of the appellants holdings at the annual value of $54,000.

At the hearing, the respondent raised a preliminary objection contending that since the appellants had not complied with the conditions of section 44 of the Town Boards Enactment (Cap. 137), the court had no jurisdiction to entertain this appeal. It was not disputed that the appellants had not complied with section 44(i) of the said Enactment by failing to pay into court the rates due when they filed their notice of appeal.

Thus, the question before the court was, where jurisdiction is given to a court by statute upon certain terms or conditions, would non-compliance thereof prevent such jurisdiction from arising.

Held, dismissing the appeal: (1) section 44(i) of the Town Boards Enactment is a mandatory provision which goes to the jurisdiction of the court. It is not directory and cannot be waived;

(2) the court's jurisdiction to entertain appeals from the Town Board of the City of Kuala Lumpur is given by statute upon certain terms or conditions as prescribed by section 44(i) of the Town Boards Enactment, and that unless these terms or conditions are complied with, the court's jurisdiction does not arise.

Cases referred to:-

(1) *Nusserwanjee Pestonjee* v. *Meer Mynoodeen Khan Wullud Meer Sudroodeen Khan Bahadoor* (1855) 6 Moo. I.A. 134; 10 E.R. 50.

(2) *In re Land Acquisition Act, Government* v. *Nanu Kothare & Ors.* I.L.R. 1906 Bom. 275, 285.

(3) *Semantan Estate (1952) Ltd.* v. *Collector of Land Revenue* [1960] M.L.J. 300.

(4) *Penang Yellow Bus Co.* v. *Rural District Council* [1961] M.L.J. 291.

(5) *Gartside & Anor.* v. *Inland Revenue Commissioners* [1968] A.C. 553, 612.

MOTION.

R. C. Hoffman for the appellants.

Chan Siew Yoon for the respondent.

Cur. Adv. Vult.

Yong J.: This is an appeal against the decision of the Commissioner of the Federal Capital of Kuala Lumpur assessing the appellants' holdings comprised in Lots 205 and 207, section 19, Jalan Weld, Kuala Lumpur at the annual value of $54,000.

At the hearing the respondent raised an important preliminary objection contending that since the appellants had not complied with the conditions of section 44 of the Town Boards Enactment (Cap. 137) this court has no jurisdiction to entertain this appeal. The relevant parts of section 44 read: —

"(i) Any person who ... is dissatisfied with the decision of the Board ... may appeal to the Supreme Court: provided that with the presentation of the petition of appeal there shall be paid into Court the amount of the rate appealed against.

(ii) Every such appeal shall be commenced within fifteen days of the date of the certificate of the Board ....

(iii) The Chairman shall be the respondent in any appeal under this section.

(iv) Every such appeal shall be heard before the Court of a Judge and the decision of such Court shall be final and conclusive."

The conditions laid down are therefore these: first, with the *presentation* of the petition of appeal the amount due for rates appealed against shall be paid into court; secondly, the appeal shall commence within 15 days from the date of the certificate; thirdly, the chairman of the board shall be made the respondent; and fourthly, the appeal shall be heard by the court of a judge whose decision shall be final and conclusive.

It is not disputed that the appellants filed their appeal on June 3, 1971 but did not pay into court the amount of the rate appealed against until September 23, 1971, a delay of more than 3½ months. The respondent contended that the appellants had therefore failed to comply with the condition laid down by the said subsection (i) which required the amount to be paid into court with the *presentation* of the petition of appeal.

One can well understand why this condition was imposed by the legislature. Frivolous appeals are often filed for the purpose of delaying payments of rates which the Town Board needs for running its public services of the town and its administration. This condition was obviously designed to prevent this mischief. It is also common knowledge that such appeals would not be heard for a considerable period of time, sometimes for months if not years.

The question before the court is: Where jurisdiction is given to a court by statute, upon certain terms or conditions, would non-compliance thereof prevent such jurisdiction from arising? After consulting various authorities including the following I came to the conclusion that it would.

In the Privy Council case of *Nusserwanjee Pestonjee* v. *Meer Mynoodeen Khan Wullud Meer Sudroodeen Khan Bahadoor,*(1) Sir John Patterson, delivering the judgment of the Board, said: —

"Wherever jurisdiction is given to a Court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise."

This principle was followed in a land reference case in *In re Land Acquisition Act, Government* v. *Nanu Kothare & Ors.*(2) where Chandravarkar J. said: —

"These are the conditions prescribed by the Act for the right of the party to a reference by the Collector to come into existence. They are the conditions to which the power of the Collector to make the reference is subject. They are also the conditions which must be fulfilled before the court can have jurisdiction to entertain the reference."

This principle was also followed by Ong J. (as he then was) in *Semantan Estate (1952) Ltd.* v. *Collec-*

tor of Land Revenue[3] where he held that since the court's jurisdiction to entertain a collector's reference rested on statute (Land Acquisition Enactment) the conditions prescribed by it must first be complied with before the court could have jurisdiction to act upon it.

This principle was also quoted and applied by Rigby J. (as he then was) in the *Penang Yellow Bus Co.* v. *Rural District Council.*[4] He also referred to a passage at page 131 of *Willway's* Quarter Sessions Practice which reads: —

"In all cases, whether under the Summary Jurisdiction Acts or otherwise, certain conditions precedent must be fulfilled before the Court to which the appeal is brought can assume jurisdiction to try it.... Further, the condition as to the giving and serving of notices of appeal, and as to recognisances or other security for prosecution of the appeal, must be meticulously observed. Particularly in criminal cases the respondent often raises no objection to the inadequacy or irregularity of notices or other formalities, but even when no objection is raised by either party the court itself must take an objection which goes to the root of the matter, because to try an appeal when, for instance, the notice is out of time, is to purport to exercise jurisdiction when no jurisdiction exists."

The facts in *Penang Yellow Bus* case, *supra,* are similar to the instant case. There the Rural District Council assessed the annual value of the Penang Yellow Bus Co.'s premises at $66,000. They appealed against such assessment and filed their notice of appeal in court but without paying the rates due. Counsel for the respondent contended that the appeal was not properly before the court by reason of the non-compliance by the appellants with the conditions laid down in section 68(3) of the Municipal Ordinance (S.S. Cap. 133) which reads: —

"No appeal shall lie against any assessment if the assessment being due is unpaid....."

Counsel for the appellants contended that the words "No appeal shall lie" meant "No appeal shall be heard by the court" and that since no specified time was stated for payment of the rates due, such condition imposed by this subsection would be sufficiently complied with if payment was in fact as was done in his case, paid before the hearing.

His Lordship rejected counsel's contention and held that payment of rates due was a condition precedent which must be complied with before the notice of appeal was lodged, and that as this was not done the appeal was not properly before the court.

Our instant case stands on stronger ground. The time for payment of the rates into court was specifically stated in section 44(i) of the Town Boards Enactment. With the *presentation* of the petition of appeal, the amount of rates appealed against shall be paid into court.

Counsel for the appellants argued that the word "With" should be construed to mean "In the course of or during". Even if this interpretation was accepted it would only mean "In the course of or during the *presentation* of the petition of appeal." It could not possibly mean "After the completion of the presentation of the petition." In the instant case the amount was paid into court 3½ months after the completion of the presentation of the petition. I therefore hold that the appellants had not complied with the condition laid down by the said subsection.

Counsel for the appellants further contended that the proviso to section 44(i) of the Town Boards Enactment was ambiguous. With respect to him I do not find any ambiguity. Even assuming that the proviso was capable of having two possible interpretations as claimed by him, I would still be bound by the canons of interpretation to adopt the one which would prevent abuse or mischief. As Lord Reid had said in the House of Lords' case of *Gartside & Anor.* v. *Inland Revenue Commissioner*[5]: —

"It is always proper to construe an ambiguous word or phrase in the light of the mischief which the provision is obviously designed to prevent, and in the light of the reasonableness of the consequences which follow from giving it a particular construction."

I hold that section 44(i) is a mandatory provision which goes to the jurisdiction of the court. It is not directory and cannot be waived.

I further hold that this court's jurisdiction to entertain appeals from the Board of the Federal Capital of Kuala Lumpur now known as the City of Kuala Lumpur was given by Statute (Town Boards Enactment Cap. 137) upon certain terms or conditions as prescribed by its section 44(i) and that unless these terms or conditions are complied with. the court's jurisdiction does not arise.

This appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Allen & Gledhill; Shook Lin & Bok.*

S.P.H. DE SILVA v. I.S. DAVID

[A.C.J. (Sharma J.) April 29, 1972]

[Ipoh — Civil Appeal No. 19 of 1971]

Principal and Agent — Manager authorised to sign cheques as "per pro" — Borrowing money on "per pro" signature — Failure to enquire as to extent of authority — Agent exceeding actual authority — Contracts (Malay States) Ordinance, 1950, s. 141 — Bills of Exchange Ordinance, 1949, s. 25.

One Arthur De Silva (deceased) was the manager of the Ipoh branch of the appellant/defendant's business. He was the appellant's brother. The appellant had authorized the deceased to operate his current account with the Chartered Bank and to "draw, sign and endorse cheques and give any instructions with regard thereto" until the bank was notified to the contrary by the appellant.

The said deceased drew two cheques for $2,000 and $3,000 on February 11, 1969 and February 25, 1969 respectively. These were "cash" cheques which were handed to the respondent/plaintiff by the deceased as security for a loan of $5,000 advanced by him. The respondent presented the two cheques for payment which were dishonoured and returned to him on July 14, 1969 with the remark "refer to drawer".

The respondent brought an action in the sessions court for the recovery of the said sum of $5,000. The defence raised was that the two cheques were drawn by procuration and that the deceased did not have any authority to issue the said cheques.

The learned president allowed the claim. The defendant appealed.